

REMARKS/ARGUMENTS

The Examiner has delineated the distinct inventions as shown on pages 2 and 3 of the Official Action dated February 11, 2009.

Applicants provisionally elect with traverse invention No. 1 (Claims 1 and 2 read on the elected invention) in view of the following arguments.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (M.P.E.P. 803). Moreover, when making a lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity of invention with each other (i.e., why there is no single inventive concept) especially describing the unique special technical feature in each group (M.P.E.P. 1893.03(d)). Applicants respectfully traverse the Restriction Requirement on the ground that the Examiner has not carried the burden of providing any reasons and/or examples that the claims of the restricted groups are patentably distinct or provide reasons and/or examples to support any conclusions that the groups lack unity of invention.

Unity of invention has to be considered in the first place only in relation to the independent claims. A dependent claim is one which contains all the features of another claim and is in the same category of claims as other claims. It does not matter if a dependent claim itself contains a further invention.

The Examiner asserts that the groups of claims do not relate to a single general inventive concept under PCT Rules 13.1 and 13.2 because they lack the same corresponding special technical feature. The Examiner, however, has not considered that the claims are considered related inventions under 37 C.F.R. § 1.475(b) in which the inventions are

considered to have unity of invention. Applicants submit that while PCT Rules 13.1 and 13.2 are applicable, 37 C.F.R. § 1.475(b) provides in relevant part that a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to (3) a product, process specially adapted for the manufacture of said product, and the use of said product.

Moreover, Applicants submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that restriction should now be required when the International Preliminary Examination Report did not, restriction is believed to be improper.

Further, M.P.E.P. 803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the examiner must examine it on the merits even though it includes claims to distinct and independent invention.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants further request that if the elected invention is found allowable, the withdrawn groups which include the limitation of the allowable claims be rejoined.

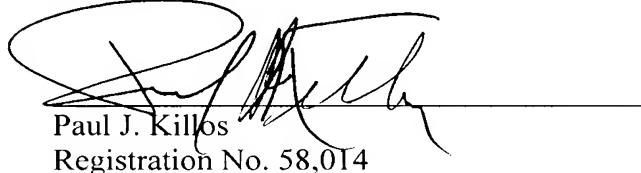
Divisional applications filed thereafter claiming the non-elected subject matter should not be subject to double-patenting ground of rejection, 35 U.S.C. § 121, In re Joyce (Comr. Pats. 1957 115 USPQ 412).

Applicants submit that the above-identified application is now in condition for examination on the merits and a notice of such action is earnestly solicited.

Respectfully submitted,

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